



County of San Bernardino

FAS

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dent	A	Contract Number
County Department Economic and Community Development			Dept. ECD	Orgn. ECD	Contractor's License No. N/A
County Department Contract Representative Thomas R. Laurin, Director			Telephone 388-0808		Total Contract Amount \$400,000
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input checked="" type="checkbox"/> Unencumbered <input type="checkbox"/> Other					
If not encumbered or revenue contract type, provide reason:					
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount
Fund SAS	Dept. ECD	Organization ECD	Appr. 200	Obj/Rev Source 2006	GRC/PROJ/JOB No. 00005050
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.
Project Name HOME Program Loan to Southern California Housing Development Corporation of Riverside 2 <sup>nd</sup> District			Estimated Payment Total by Fiscal Year FY Amount I/D FY Amount I/D All funds disbursed at close of escrow		

CONTRACTOR Southern California Housing Development Corporation of Riverside

Federal ID No. or Social Security No. 31-1759809

Contractor's Representative Ashley Wright

Address 8265 Aspen Street, Suite 100, Rancho Cucamonga, CA 91730 Phone (909) 483-2444

Nature of Contract: *(Briefly describe the general terms of the contract)*

This HOME Loan Agreement provides for the disbursement of HOME CHDO New Construction Program funds to the above-referenced Borrower. The loan will provide financing for the development of a forty-nine (49) unit affordable rental complex located at 8590 Malvern Avenue, in the city of Rancho Cucamonga, to be known as Heritage Pointe Senior Apartments. HOME funds will make 11(Eleven) 1-BR units affordable and available to senior residents earning 50% or less of the area median income (AMI). The units will remain affordable for a period of fifty-five (55) years from initial occupancy. HOME Program funds, in the amount of Four Hundred Thousand Dollars (\$400,000) are required to be disbursed at close of escrow for the development of this property. The Borrower, Southern California Housing Development Corporation of Riverside, is a San Bernardino County Community Housing Development Organization (CHDO), certified pursuant to the HOME Program Regulations.

**This project meets HOME Program eligibility criteria conditions set forth in the HOME Program Loan Agreement and will permit staff to complete the closing process.**

The attached contract/agreement consists of 45 pages.

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)  County Counsel	Reviewed as to Contract Compliance  	Reviewed for Processing  Agency Administrator/CAO
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Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

<b>Auditor/Controller-Recorder Use Only</b>	
<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

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HOME INVESTMENT PARTNERSHIP AGREEMENT

by and between

COUNTY OF SAN BERNARDINO

and

SOUTHERN CALIFORNIA HOUSING DEVELOPMENT CORPORATION OF RIVERSIDE,  
MANAGING GENERAL PARTNER FOR MALVERN HOUSING PARTNERS L.P., A  
CALIFORNIA LIMITED PARTNERSHIP

for

Heritage Pointe Senior Apartments – Rancho Cucamonga, CA

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## HOME PARTNERSHIP INVESTMENT AGREEMENT

THIS HOME PARTNERSHIP INVESTMENT Agreement ("Agreement") is entered into as of the 29<sup>th</sup> day of October, 2002, by and between the County of San Bernardino ("County"), Southern California Housing Development Corporation of Riverside, ("Borrower") and Malvern Housing Partners L.P., A California Limited Partnership, ("Designated Owner"). The Borrower is the Managing General Partner for Malvern Housing Partners L.P., A California Limited Partnership, ("Designated Owner").

### RECITALS

A. The County has received funds from the United States Department of Housing and Urban Development (HUD) pursuant to the Federal government's HOME Program, 42 U.S.C. § 12701, *et seq.*, to be used for the purposes of this Agreement in accordance with the HOME Regulations.

B. County shall act as the representative member of HOME for purposes of the HOME program, assuming overall responsibility for ensuring that the HOME program is implemented in compliance with the program regulations.

C. Designated Owner and Borrower propose that the HOME funds, which are the subject of this Agreement, will be used for the development/construction of the property and to assure the long-term affordability of Eleven (11) of the units to Very Low Income households as described herein.

D. Borrower, requires financial assistance from the County to accomplish its activities.

E. By this Agreement, and subject to the terms and conditions herein, the County desires to provide financial assistance to Borrower, as the Managing General Partner of the Designated Owner, for development/construction costs in the form of a loan of Four Hundred Thousand Dollars (\$400,000), and the Borrower and Designated Owner desire to make available and rent Eleven (11) of the units to Very Low Income Households at Affordable Rents (as those terms are defined herein) for a specified period of time.

## **100. INTRODUCTORY SECTIONS**

### **101. Definitions.**

The following terms shall have the following meanings in this Agreement:

1. "Affordable Housing Development" shall mean the 49-unit multifamily rental complex, "Heritage Pointe Senior Apartments", to be constructed on the Property (as described in Exhibit A).

2. “Affordable Rent” shall mean the maximum rent allowed for the Affordable Units in accordance with Section 92.252 of the HOME Regulations.

3. “Affordable Units” shall mean the units on the Property required to be leased at an Affordable Rent to qualified Very Low Income Households, as set forth in Section 402 hereof.

4. “Affordability Period” A total of Eleven (11) HOME-assisted units shall remain affordable to Very Low Income households, those households earning 50% or less than the Area Median Income for not less than fifty-five (55) years beginning upon the date the Notice of Completion of the project has been recorded.

5. “Agreement” shall mean this HOME Investment Partnership Agreement.

6. “Annual Financial Statement” shall mean the financial statement of Operating Expenses and Revenues, prepared at the Borrower’s and/or Designated Owner’s expense, by an independent certified public accountant which shall form the basis for determining the Residual Receipts.

7. “Borrower” shall mean Southern California Housing Development Corporation of Riverside, a San Bernardino County Community Housing Development Organization (CHDO) certified pursuant to the HOME Regulations. Southern California Housing Development Corporation of Riverside, is the managing general partner for Malvern Housing Partners, LP., A California Limited Partnership, the Designated Owner as identified below.

8. “Certificate of Occupancy” shall mean the Certificate of Occupancy to be issued upon the final completion of the Development/Construction on the Property.

9. “Community Housing Development Organization (CHDO)” shall mean a private nonprofit organization certified in the County of San Bernardino pursuant to Section 92.2 of the HOME Regulations.

10. “Contractor” shall mean a licensed construction contractor performing construction work for the Development/Construction which has been approved by the County.

11. “County” shall mean County of San Bernardino.

12. “County Loan” shall mean the HOME Program loan in the amount of Four Hundred Thousand Dollars (\$400,000) by the County to the Borrower. The loan is the subject of this Agreement.

13. “Debt Service” shall mean the scheduled principal and interest payments made on the Primary Loan(s).

14. “Deed of Trust” shall mean the Deed of Trust in favor of the County to be recorded as a lien against the Property owned by Designated Owner securing the Note.



15. “Designated Owner” shall mean Malvern Housing Partners L.P., a California Limited Partnership.

16. “Development Costs” shall mean all costs and expenses approved pursuant to this Agreement which are customarily incurred and shall have been actually incurred by the Borrower for the Development/Construction of the Property and shall include without limitation the following: construction costs; architectural and engineering costs and fees (if any); financing fees, (“points”); building permits; title and title insurance; escrow fees and closing costs; appraisals; tests to determine the condition of the Property; and such other costs, fees and expenses, as may be required in writing by the County; provided, however, that payment to parties related to the Borrower for Development Costs do not exceed market rates.

17. “Escrow” shall mean the Escrow which is established by the Borrower and identified in writing to the County Department of Economic and Community Development (ECD) with reference to the disbursement of the HOME loan for the Development/Construction of the Property.

18. “Escrow Holder” shall mean the Escrow Administrator for the Escrow.

19. “Floating units” shall mean units which must comply with the HOME Regulations.

20. “HOME Program” shall mean the HOME Investment Partnership Act, 42 U.S.C. § 12701, *et seq* as it now exists and, subject to the provisions of Section 307 herein, as may hereafter be amended.

21. “HOME Regulations” shall mean the implementing regulations of the HOME Program set forth at 24 CFR 92 as they now exist and, subject to the provisions of HOME Program Requirements Section herein, as may hereafter be amended.

22. “Loan Documents” shall mean the following documents evidencing the County Loan and required as consideration for County to make the County Loan: (i) the Note; (ii) the Deed of Trust; (iii) Request for Notice of Default; and (iv) this Agreement. Loan Documents shall be executed between the County and the Designated Owner. Borrower shall co-sign all loan documents.

23. “Low-Income Households” shall mean those households as defined in Section 92.2 of the HOME Regulations whose annual incomes do not exceed eighty percent (80%) of the County of San Bernardino median income adjusted for family size as determined by the United States Department of Housing and Urban Development (HUD).

24. “Note” shall mean the Promissory Note in the principal amount of Four Hundred Thousand Dollars (\$400,000) evidencing the County Loan. The Note shall be in the form of Exhibit D attached hereto.

25. “Operating Expenses” shall mean actual, reasonable and customary costs, fees and expenses for similarly restricted and financed apartment projects directly incurred and attributable to

the operation, maintenance, and management of the Property; Debt Service and other periodic fees and payments in connection with the Primary Loan financing of this Affordable Housing Development; painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; certificates, permits and licenses; sewer charges; real property taxes and assessments; insurance; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings; reasonable fees and expenses of accountants, attorneys, consultants and other professionals; and establishment and funding of certain reserve accounts for maintenance and operation of the Affordable Housing Development not funded directly by the County Loan, provided, however, that payments to parties related to the Borrower for Operating Expenses do not exceed market rates for similarly restricted and financed apartment projects. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported in the Annual Financial Statement.

26. "Parties" shall mean the County, the Borrower and the Designated Owner.

27. "Primary Loan" shall mean the mortgage loan or loans obtained by the Designated Owner from a reputable financial institution for financing the Development/Construction of the Property. Initially, "Primary loan" shall mean the interim construction loan from Washington Mutual Bank in the amount of \$850,000, Federal and State Low Income Housing Tax Credits in the amount of \$649,350 and a loan from Rancho Cucamonga Redevelopment Agency in the amount of \$3,920,000. The permanent financing "Primary Loan" shall mean a loan from Washington Mutual Bank in the amount of \$350,000, Federal and State Low Income Housing Tax Credits in the amount of \$1,443,000 and a loan from the Rancho Cucamonga Redevelopment Agency in the amount of \$3,920,000.

28. "Primary Lender" shall mean the reputable financial institution(s) that provide(s) the Primary Loan(s) for the Project. "Primary Lender" during constructions shall mean, Washington Mutual Bank, Federal and State Low Income Housing Tax Credits, and the Redevelopment Agency of the City of Rancho Cucamonga, and the permanent lenders shall be, Washington Mutual Bank, Federal and State Low Income Housing Tax Credits and The Redevelopment Agency of the City of Rancho Cucamonga.

29. "Project" shall mean the HOME Loan for the Development/Construction of the Property in accordance with the provisions set forth in this Agreement.

30. "Property" shall mean the real property located at 8590 Malvern Avenue, Rancho Cucamonga, APN 0209-041-54, as more particularly described and shown in the Legal Description attached hereto as Exhibit A and incorporated herein by this reference, together with the buildings, tangible personal property, fixtures and other improvements to be located thereon.

31. "Relocation" shall mean any relocation assistance or payment required to be provided to past or present tenants of the Property under applicable Federal, state, or local laws and/or regulations. NOTE: Property is currently vacant. Relocation assistance is not applicable to this Project.

32. “Request for Notice of Default” shall mean a request for Notice of Default to be recorded against the Property in a form approved by the County.

33. “Residual Receipts” shall mean the Revenue, less the sum of Operating Expenses as defined herein for the Affordable Housing Development, calculated on an annual basis. All calculations of Residual Receipts shall be subject to verification and approval by the County.

34. “Revenue” shall mean the gross rental income from the Property and any other income the Borrower derives from the ownership, operation and management of the Affordable Housing Development.

35. “Term” of this agreement shall be fifty-five (55) years from the date of the Notice of Completion is recorded by the County Recorder which is also the affordability period. The term of the Note shall mean the period commencing on the date of close of Escrow and shall continue for the twenty (20) years.

36. “Very Low-Income Households” shall mean those households as defined in Section 92.2 of the HOME Regulations whose annual incomes do not exceed fifty percent (50%) of the San Bernardino County median income adjusted for family size as determined by the United States Department of HUD.

**102. Representations and Warranties of Borrower and Designated Owner.** Borrower and Designated Owner hereby represents and warrants to the County as follows:

1. Organization. Borrower is Southern California Housing Development Corporation of Riverside, a Community Housing Development Organization (CHDO) certified in the County of San Bernardino and has the power and authority to own property and carry on its business as now being conducted. Southern California Housing Development Corporation of Riverside is the Managing General Partner for Malvern Housing Partners L.P., A California Limited Partnership, the Designated Owner. Copies of the documents evidencing the organization of the Borrower and the Designated Owner delivered to the County are true and correct copies of the originals, as amended to the date of this Agreement.

2. Authority of the Borrower and Designated Owner. The Borrower and the Designated Owner each has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the County Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

3. Authority of Persons Executing Documents. This Agreement and the County Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for or on behalf of the Borrower and/or the Designated Owner, and all actions required under the Borrower’s and Designated Owner’s organizational

documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the County Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

4. Valid Binding Agreements. This Agreement and the County Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Borrower and the Designated Owner enforceable against it in accordance with their respective terms.

5. No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the County Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, does or will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Borrower and the Designated Owner, or any provision of the organizational documents of the Borrower and the Designated Owner, or will conflict with or constitute a breach of or a default under any Agreement to which the Borrower and the Designated Owner is a party, or will result in the creation or imposition of any lien upon any assets or property of the Borrower and the Designated Owner other than liens established pursuant hereto.

6. Pending Proceedings. The Borrower and the Designated Owner are not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower and the Designated Owner, threatened against or affecting the Borrower and the Designated Owner or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower and the Designated Owner, materially affect the Borrower's and the Designated Owner's ability to repay the County Loan or impair the security to be given to the County pursuant hereto.

Each of the foregoing items (1) through (6), inclusive, shall be deemed to be an ongoing representation and warranty. The Borrower and the Designated Owner shall immediately advise the County in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (1) through (6), inclusive.

### **103. Limitation Upon Change in Ownership, Management and Control of the Borrower.**

1. Prohibition. During the Term of this Agreement, no voluntary or involuntary successor in interest of the Borrower or the Designated Owner shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Borrower or the Designated Owner make any total or partial sale, transfer, conveyance, or encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the County, except as expressly set forth herein. Any purported transfer, voluntary or by operation of law, in violation of this Section 103 shall constitute a default hereunder and shall be void.

2. Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, County approval of an assignment of this Agreement or conveyance of the Property or any part thereof, shall not be required in connection with the following:

a. The conveyance or dedication of any portion of the Property to the County or other appropriate governmental agencies, or the granting of easements or permits to public utilities to facilitate the operation of the Property.

b. The transfer of limited partnership interest in Malvern Housing Partner, L.P., as follows: RCC Credit Facility, L.L.C. (the “Investor”) will act as the initial investor limited partner and Related Direct SLP LLC (the “SLP”) will act as the initial special limited partner; the Investor and the SLP will have the right to assign all of the respective right, title and interest in Malvern Housing Partners, L.P. to affiliates. If there is a default by one or more of the existing general partners of Malvern Housing Partners, L.P., the County will not unreasonably withhold its consent to a removal and replacement of such defaulting general partner(s) by the Investor, the SLP, or their successors or assigns; provided, that the County may reasonably withhold its consent to a removal of Southern California Housing Development Corporation of Riverside as the managing general partner of Malvern Housing Partners, L.P. unless it is replaced with another non-profit corporation recognized as a Community Housing Development Organization under applicable County policies and HUD regulations. The foregoing shall not constitute approval of a transfer of any ownership interest in the Property or the HOME Loan Agreement and any such transfer shall be subject to County approval in accordance with the terms of the HOME Loan Agreement.

3. Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Borrower and the Designated Owner and the permitted successors and assigns of the Borrower and the Designated Owner. Whenever the term “Borrower” or “Designated Owner” is used in this Agreement, such terms shall include any other permitted successors and assigns as herein provided.

#### **104. HOME PROGRAM PROVISIONS**

1. Use of the HOME Program funds. Activities to be performed under this Agreement are described in Section 201. Specific tasks to be performed including a schedule for completing said tasks are attached as Exhibit B, SCHEDULE OF PERFORMANCE. A Project budget has been reviewed, approved and attached as Exhibit G, PROJECT BUDGET.

2. Affordability. Housing assisted with HOME Program funds under this Agreement must meet the requirements described in 92.252 of HOME Regulations and are to be maintained as “affordable” to very low-income households pursuant to the following, commencing at initial rent-up, as set forth in Section 401 and 402 of this Agreement. The County Loan shall become immediately due and payable if Eleven (11) HOME-assisted units are not maintained affordable to be rented to households earning fifty percent (50%) or less than the Area Median Income for not less than fifty-five (55) years from initial occupancy.

3. Repayment. Terms for repayment are outlined in Sections 204 and 205 of this Agreement and restated in the Note.

3. Uniform Administrative Requirements (92.505). The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR Part 85 apply to governmental subrecipients receiving HOME Program funds: 85.6, 85.12, 85.20, 85.22, 85.26, 85.35, 85.36, 85.44, 85.51 and 85.52. The requirements of OMB Circular No. A-122 and the following requirements of OMB Circular A-110 apply to subrecipients receiving HOME Program funds that are non-profit organizations: Attachment B; Attachment F; Attachment H, Paragraph 2; and Attachment O. (Copies of OMB Circulars may be obtained from E.O.P. Publications, Room 2200, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-7332).

5. Project Compliance. This Agreement requires that the Project comply with all applicable requirements of Subpart F of the HOME Regulations.

6. Housing Quality Standards. Housing assisted with HOME Program funds under this Agreement shall be maintained to meet U. S. Department of Housing and Urban Development Housing Quality Standards and local housing code requirements for the duration of this Agreement.

7. Other Program Requirements. The Borrower and Designated Owner must implement this Project in conformance with HOME Program requirements as described in Section 307 of this Agreement and Subpart H of HOME Regulations.

8. Affirmative Marketing. The Borrower must comply with requirements described in Section 307.3 of this Agreement and Subpart H, Section 92.351 of the HOME Program Regulations.

9. Conditions of Religious Organizations. HOME Program funds may not be provided to primarily religious organizations such as churches, for any activity, including secular activities, as described in Section 92.257 of the HOME Regulations.

10. Request for Disbursement of Funds. The County shall disburse funds to the Borrower in compliance with Section 207 of this Agreement.

11. Reversion of Assets. Any subrecipient, as defined in Subpart A, Section 92.2 of the HOME Regulations, shall agree to transfer to the County any HOME Program funds on hand at the time of the expiration or termination of the Agreement, and any accounts receivable attributable to the use of HOME Program funds.

12. Records and Reports.

a. The Borrower, as the Managing General Partner of the Designated Owner, shall maintain the following records and reports in order to assist the County in meeting its record keeping and reporting requirements:

- (1) Files on the annual review and certification of tenant income;
- (2) Any information on the qualification of affordable rents;
- (3) Terms and conditions of all signed leasehold agreements between tenants and Borrower; and
- (4) All legal reports and records required by County.

b. The Borrower, as the Managing General Partner of the Designated Owner, shall provide copies of all construction inspection reports to the County, within seven calendar days of report issuance. The Borrower shall also provide the County with a copy of the occupancy permit issued by the City of Redlands.

13. Enforcement of the Agreement. The County shall have the right, by prior written notice to the Borrower and Designated Owner, to enforce by liens on the real property, this Agreement which runs with the land concerning affordability requirements in 24 CFR Section 92.252, or any other such violation as is brought to the attention of the County regarding the Project. In the event of a breach of any condition or provision hereof, the County shall have the right, by prior written notice to the Borrower and Designated Owner to suspend or terminate this Agreement if the Borrower or the Designated Owner fails to comply with any term of the Agreement. Termination of this Agreement, in whole or in part, shall be made by giving the Borrower and Designated Owner written notice in accordance with 24 CFR 85.44.

14. Duration of this Agreement. This Agreement will remain in effect for fifty-five (55) years from the date of the Notice of Completion is recorded, which is the period of affordability as determined under Section 92.252 of the HOME Regulations.

15. Monitoring.

a. The County is responsible for managing the day-to-day operations of its HOME Program and monitoring the performance of all entities receiving HOME Program funds to ensure compliance with the requirements of Subpart K, of the HOME Regulations, and for taking appropriate action when performance problems arise.

b. Not less than annually, the County will review the activities of Borrower and the Designated Owner as relates to the management and ownership of this Affordable Housing Development assisted with HOME Program funds to assess compliance with the requirements of Subpart K, of the HOME Regulations, as set forth in this Agreement.

c. The results of these reviews must be included in the County's performance report required by Part 91 of the Cranston-Gonzalez National Affordable Housing Act.

## **200. FINANCING**

**201. County Loan.** The County has been awarded funds by HUD pursuant to the HOME Program. The County hereby agrees to loan from such HOME Program funds, and the Borrower

hereby agrees to borrow, the amount of Four Hundred Thousand Dollars (\$400,000) - the "County Loan") for the development of the property located at 8590 Malvern Avenue, Rancho Cucamonga, CA as more particularly described in the Legal Description attached hereto as Exhibit A and incorporated herein by this reference, subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the County Note, as shown in Exhibit D, PROMISSORY NOTE, to be completed during Escrow and to be executed by the Designated Owner, co-signed by the Borrower, in connection with this transaction. Said Note shall be secured by a Deed of Trust in a form satisfactory to the County. Designated Owner and Borrower shall execute all additional loan documents required by County.

**202. Sources of Financing.** The County, the Borrower and the Designated Owner anticipate that Development/Construction shall be financed with a combination of funds from loan proceeds from the HOME Program funds provided to the Borrower in the form of the County Loan. Other funding sources include construction financing and permanent financing through Washington Mutual Bank, Federal and State Low Income Housing Tax Credits and secondary loan financing through the Redevelopment Agency of the City of Rancho Cucamonga.

**203. Submission of Evidence of Financing.** The Borrower and the Designated Owner have submitted to County evidence that firm and binding commitments from all other funding sources have been obtained for financing necessary to undertake development/construction in accordance with this Agreement.

**204. Interest.** The County Loan shall bear interest at a rate of three percent (3%) as defined in the Note except that upon the occurrence of an Event of Default by Borrower or Designated Owner as defined in Section 501. In the Event of Default, interest shall accrue on the unpaid principal balance of the Note at the rate of twelve percent (12%) per annum compounded annually from the date of default as determined by the County until the Note is paid in full; provided, however, that if such rate of interest may not be collected under applicable law, interest shall accrue on the unpaid principal balance of the Note at the highest rate permitted under the laws of the State of California.

**205. Repayment.** As long as Borrower is in compliance with all terms and conditions of this Agreement and the Note, repayment of the debt shall be deferred for a period of up to 5 years, commencing upon close of escrow, and continuing for five (5) years. At the end of the five-year period or **any year prior to the end of the five-year** period where the net profit, (Residual Receipts as defined herein) exceeds 15%, the County may require the appropriate repayment to begin.

The County may extend the repayment deferral period(s) for additional five (5) year periods, or portions thereof, if all terms and conditions set forth in this Agreement are continuing to be met. The entire loan may be forgiven if all terms and conditions set forth in said Agreement are met for the entire 20-year loan period.

Notwithstanding the foregoing, the balance due under the Note shall be immediately due and payable at the election of the County upon the earlier of (i) the sale, lease, exchange, assignment or other conveyance (whether voluntary or by operation of law) of all or any part of the Property or any interest in the Property (other than the lease of Affordable Units to Very Low-Income and Low-Income



tenants pursuant to the terms of this Agreement); (ii) the refinancing of the County Loan; or (iii) an Event of Default by the Borrower as defined in Section 501 herein below.

**206. Assumption.** The Note shall not be assignable or assumable by successors and assigns of the Designated Owner without the prior written consent of the County, which consent may be withheld in the County's sole and complete discretion if the County finds that the proposed assignee has inadequate assets, experience, or qualifications, or any other reasonable basis exists for withholding consent.

**207. County Loan Disbursement.** Upon satisfaction of the conditions precedent to County Loan disbursement set forth in Section 211 below, the County shall disburse into the Property Construction Escrow Account, Four Hundred Thousand Dollars (\$400,000) of the County Loan to be used solely for the development/construction of the property, including any development/construction costs as defined in Section 101 (15), Development Costs. Upon satisfaction of the conditions precedent to disbursement of the County Loan as set forth in Section 211 below, the County shall disburse the entire amount of the County Loan to the construction lender to be held by the construction lender as Borrower funds in the account or accounts established by the construction lender for construction of the improvements on the Property. Proceeds of the County Loan shall be disbursed by the construction lender solely for the development of the Property, including the payment of any development/construction costs incurred by the Borrower, as defined in Section 101. The proceeds of the County Loan shall be disbursed by the construction lender in full for payment of construction expenses for the project prior to the disbursement of the proceeds of the construction loan for payment of such construction expenses. The proceeds of the County Loan shall be disbursed by the construction lender upon satisfaction of all construction inspection requirements as evidenced by completed construction inspection reports.

**208. Security for County Loan.** The County Loan shall be evidenced by this Agreement and the Note and shall be secured by the Deed of Trust.

**209. Subordination of Deed of Trust.** The Deed of Trust shall be subordinate only to the Primary Loan as defined herein and shall not be subordinate to the lien of any other loans, mortgages or deeds of trust.

**210. Condition of the Property.**

1. Environmental Condition Prior to County Loan Disbursement. The Borrower and the Designated Owner represent to the County that they are not aware of, to the best of their actual constructive knowledge, and they have not received any notice or communication from any governmental agency having jurisdiction over the Property, the seller of the Property, or any other person or entity, notifying them of the presence of Hazardous Materials or Hazardous Materials Contamination in, on, or under the Property, or any portion thereof. The Borrower and the Designated Owner know of no circumstances, conditions or events that may now, or may with the passage of time, give rise to any Environmental Claim against or affecting the Property.

2. Indemnification. In addition to, and without limiting the indemnity provided for in Section 211, the Borrower and the Designated Owner shall save, protect, pay for, defend, indemnify and hold harmless the County and its officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation penalties, fines and monetary sanctions), losses, costs or expenses (including without limitation consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the County or its officers, employees, representatives or agents by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of (i) the ownership of all or any part of the Property; (ii) any act or omission of any person; (iii) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination; (iv) the environmental condition of the Property; and (v) any Liabilities incurred under any Governmental Requirements relating to Hazardous Materials.

3. Release. The Borrower and the Designated Owner hereby waive, release and discharge forever the County, and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the County's or the Borrower's and the Designated Owner's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials Contamination in any state on the Property, however they came to be emplaced there.

The Borrower and the Designated Owner acknowledge that they are aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

(a) "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor."

(b) As such relates to this Section 210, the Borrower and the Designated Owner hereby waive and relinquish all rights and benefits which they may have under Section 1542 of the California Civil Code.

(c) Notwithstanding the foregoing, this Release shall not be effective in the event the presence or release of Hazardous Materials on the Property occur as a result of the gross negligence or willful misconduct of County, its officers, employees, representatives and agents.

4. Duty to Prevent Hazardous Material Contamination. Upon the execution of this Agreement, the Borrower and the Designated Owner shall take such actions as are necessary or prudent to prevent the release of any Hazardous Materials into the environment on or under the Property. During the operation and maintenance of the Property, the Borrower and the Designated Owner shall take all necessary precautions to prevent the release of any Hazardous Materials into the

environment on or under the Property. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Borrower and the Designated Owner shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the then prevailing standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

5. Environmental Inquiries. The Borrower and the Designated Owner shall notify the County, and provide to the County a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports or certificates filed, or applications made, pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and the Borrower and the Designated Owner shall report to the County, as soon as possible, any unusual or potentially important incidents including, but not limited to, the following:

- (a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials required by any Governmental Requirements;
- (b) All notices of suspension of any permits;
- (c) All notices of violation from Federal, state or local environmental authorities;
- (d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding Federal statutes concerning investigation, compliance schedules, clean-up, or other remedial actions;
- (e) All orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, and clean-up and abatement orders;
- (f) Any notices of violation from OSHA or CAL-OSHA concerning employees' exposure to Hazardous Materials; and
- (g) All complaints and other pleadings filed against the Borrower, the Designated Owner or the County relating to the Borrower's and the Designated Owner's storage, use, transportation, handling or disposal of Hazardous Materials on the Property.

In the event of a release of any Hazardous Materials into the environment, the Borrower or the Designated Owner shall, as soon as possible after the release, furnish to the County a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the County, the Borrower or the Designated Owner shall furnish to the County a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

6. Definitions. For the purposes of this Section 210, the following terms shall have the meanings herein specified:

(a) The term “Hazardous Materials” shall mean (i) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25300 et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) petroleum, oil, gasoline (refined and unrefined) and their respective by-products and constituents; and (vi) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any “Governmental Requirements” (as defined in Subparagraph (c) of Paragraph 6 of this Section 210) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment.

(b) The term “Hazardous Materials Contamination” shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in, or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in, or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Property.

(c) The term “Governmental Requirements” shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the County, the Borrower, the Designated Owner or the Property.

(d) The term “Environmental Claim” shall mean (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of non-compliance or violation and notices to comply), requests for information or investigation instituted or threatened by any governmental authority pursuant to any Governmental Requirement; or (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate to any damage, contribution, cost recovery, compensation, loss or injury resulting from the release or threatened release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirement, or the generation, manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

**211. Conditions Precedent to Disbursement of County Loan Proceeds.** The County shall disburse the required portions of the County Loan proceeds on behalf of the Borrower in accordance with Section 207 and, subject to the requirements of Section 203 and this Section 211, within the times set forth in the Exhibit B, SCHEDULE OF PERFORMANCE. No disbursement of the County Loan shall be made until all of the following conditions are completed to the satisfaction of the County:

1. Execution and Delivery of Documents. The Borrower and the Designated Owner shall each have executed and delivered into Escrow the Note, the Deed of Trust, this Agreement, and any other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the County.

2. Indemnification. The Borrower and the Designated Owner agree to indemnify, defend and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim therefore, except where such indemnification is prohibited by law.

3. Insurance. Without in any way affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract the following types of insurance with limits as shown:

4. Workers' Compensation. A program of Workers' Compensation insurance or a state-approved Self Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the Borrower and the Designated Owner and all risks to such persons under this Agreement.

If the Borrower or the Designated Owner has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

With respect to Borrowers and Designated Owners that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance. If the County's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

5. Comprehensive General and Automobile Liability Insurance. This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

6. Property Insurance. Property insurance shall cover all real and personal (non-expendable) property in a form appropriate for the nature of such property, covering all risks of loss including Builders Risk/Course of Construction covering fire, casualty and such other hazards as may be specified by the Primary Lender, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County and naming the County as loss payee.

7. Additional Named Insured. All policies, except for the Workers Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insureds with respect to liabilities arising out of the performance of services hereunder.

8. Waiver of Subrogation Rights. the Borrower and the Designated Owner shall require the carriers of the above required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors.

9. Policies Primary and Non-Contributory. All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

10. Proof of Coverage. The Borrower and the Designated Owner shall immediately furnish certificates of insurance to the County Department administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Borrower/Designated Owner shall maintain such insurance from the time Borrower/Designated Owner commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the Borrower and/or the Designated Owner shall furnish certified copies of the policies and all endorsements.

11. Insurance Review. The above insurance requirements are subject to periodic review by the County. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to the Agreement. Borrower and Designated Owner agrees to execute any such amendment within thirty (30) days of receipt.

## **212. Other Conditions.**

1. Title to Land. Upon the close of Escrow, the Designated Owner shall have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable, the Deed of Trust approved by the County and any other matters approved in writing by the County. In furtherance of this provision, upon

issuance of a preliminary title report and the title insurance policy pursuant hereto, the Borrower or the Designated Owner shall submit copies thereof to the County.

2. Permits and Approvals. The Borrower or the Designated Owner shall, at its own cost and expense, obtain any and all permits and approvals required by the County or by other governmental agencies for the Property, pursuant to the Schedule of Performance (Exhibit B) approved by the County herein.

3. Recordation. The Escrow Holder shall record this Agreement and the Deed of Trust against the Property at the close of Escrow and issue or cause to be issued to the County by a title insurance company approved by the County, an American Land Title Association policy of lender's title insurance with mechanic's lien coverage, together with such endorsements as the County may require, which shall insure the Deed of Trust as a lien upon the Property subject only to the items specified herein.

4. Priority of This Agreement. This Agreement has been executed and the Escrow Holder shall record this Agreement at the close of Escrow, and such Agreement shall be subordinate to the lien of the Primary Loan and shall be prior to, and superior to, all other liens and encumbrances of record with respect to the Property.

5. Plans and Specifications. The Borrower and/or the Designated Owner shall have submitted to the County and the County shall have approved the Construction Plans for the development of the Property. Such approval of County shall not relieve Borrower's or the Designated Owner's obligation to obtain any and all permits and approvals required by the County or other governmental agency for the Development/Construction including without limitation building permits, plans and specifications. As used in this Agreement, "Construction Plans" shall mean all construction documentation upon which the Borrower, Designated Owner, and Contractor shall rely in undertaking the development (including landscaping, parking and common areas) and shall include without limitation final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings") and a time schedule for construction.

6. Monitoring Capability. The Borrower or the Designated Owner shall demonstrate to the satisfaction of the County that the project record keeping and monitoring system is capable of complying with the requirements set forth in Section 407 herein.

7. Representations and Warranties. All representations and warranties of each of the Borrower and the Designated Owner herein contained are true and correct.

8. Property Appraisal. Before the close of Escrow, the Borrower or the Designated Owner shall submit to County a true and correct copy of an appraisal of the fair market value of the property for County's approval.

9. Other Special Terms and Conditions. Special Terms and Conditions contained within the attached Exhibit H, SPECIAL TERMS AND CONDITIONS, are incorporated herein by

this reference. Prior to any disbursement of the County Loan, the Borrower and the Designated Owner must satisfy all requirements set forth in Exhibit H, SPECIAL TERMS AND CONDITIONS.

### **300. DEVELOPMENT/CONSTRUCTION OF THE PROPERTY**

**301. Commencement and Completion of Construction.** Within the times set forth in the Exhibit B, SCHEDULE OF PERFORMANCE, the Borrower and or Designated Owner hereby covenants and agrees to commence and to diligently prosecute to completion the Development/Construction and subsequent operation of the Affordable Housing Development in accordance with Exhibit B, SCHEDULE OF PERFORMANCE, the site plan and other plans and drawings to be submitted and approved in accordance with Sections 305 and 306 hereof, including any applicable mitigation measures and to record a Notice of Completion pursuant to California Civil Code Section 3093. Subject to the provisions of Section 200 *et seq.*, the Borrower and/or the Designated Owner, at the Borrower's and/or the Designated Owner's sole cost and expense, shall complete or cause the completion of the Development/Construction and subsequent initiation of operation of the Affordable Housing Development pursuant to this Agreement and Exhibit B, SCHEDULE OF PERFORMANCE.

Borrower and/or Designated Owner shall, at its own expense, secure or cause to be secured any and all permits which may be required by the County or any other governmental agency affected by such construction. It is understood that the Borrower and/or the Designated Owner is obligated to pay all necessary fees and to timely submit to the County final drawings with final corrections to obtain any necessary building permits from the County. The Development/Construction shall include without limitation the construction of the residential units to be located on the Property required by the County as specified in Exhibit B, SCHEDULE OF PERFORMANCE.

**302. Relocation.** The County shall be fully responsible for administering determinations of eligibility and payments pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Section 4601 *et seq.*) and pursuant to any other Federal, state or local enactment including implementing regulations providing for relocation assistance or benefits in connection with the acquisition of the Property pursuant to this Agreement (collectively, the "Relocation Laws"). The cost of such permanent relocation including without limitation relocation benefits paid to eligible persons as determined by the County, consultant fees, attorney's fees and court costs arising or in any way connected with claims for relocation assistance or benefits as may be asserted by any resident of the Property ("Relocation Cost") shall be paid by the Borrower or the Designated Owner. Pursuant to 24 CFR Part 92 §92.205, HOME Program funds may be used by the County for eligible relocation expenses. NOTE: There is no Relocation Assistance is associated with this project.

**303. Notice of Completion.** Promptly after the completion of the development/construction, in conformity with this Agreement, the Designated Owner shall execute a Notice of Completion that evidences and determines the satisfactory completion of the Development/Construction in accordance with this Agreement. The Notice of Completion shall be immediately filed for recording by the County Recorder.



The issuance and recordation of the Notice of Completion with respect to the Property shall not supersede, cancel, amend or limit the continued effectiveness of any obligations relating to the maintenance, or uses, or payment of monies, or any other obligations, except for the obligation as referred to in Section 3093 of the California Civil Code.

**304. Taxes and Assessments.** So long as the Designated Owner, or its successor, assigns, owns or leases the Property or portions thereof, the Designated Owner shall pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that the Designated Owner shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the Designated Owner exercises its right to contest any tax, assessment, or charge against it, the Designated Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges, and interest.

**305. Entry by the County.** The Borrower and the Designated Owner shall permit the County, through its officers, agents, or employees, at all reasonable times to enter into the Property to determine that the same is maintained in conformity with applicable codes, laws, and regulations. The Borrower and the Designated Owner acknowledges that the County is under no obligation to supervise, inspect, or inform the Owner of property compliance with codes, and the Borrower and the Designated Owner shall not rely upon the County therefor. The Borrower and the Designated Owner shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the maintenance, and of the performance of subcontractors.

**306. Compliance with Laws.** The Borrower and the Designated Owner shall comply with all federal, state and local statutes, ordinances, regulations and laws with respect to the ownership and operation of the Project including without limitation the rental of the Affordable Units.

a. The Borrower and the Designated Owner acknowledge that the Project may be subject to the payment of prevailing wages under California law. The Borrower and the Designated Owner are responsible for assuring compliance with any applicable prevailing wage requirements.

**307. HOME Program Requirements.** Because the County Loan to the Borrower will be provided through HOME Program funds, the Borrower and the Designated Owner shall carry out the development and operation of the Project in conformity with all requirements of the HOME Program such as, but not limited to:

1. Equal Opportunity. No person shall be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, HOME funds must be made available in accordance with all laws and regulations listed in Section 92.350(a).

2. Fair Housing. Actions described in Section 570.904(c) of Title II of the Cranston-Gonzalez National Affordable Housing Act to further fair housing shall be adhered to.

3. Affirmative Marketing. The Borrower and/or the Designated Owner shall adopt affirmative marketing procedures and requirements. These must include:

- (a) Methods for informing the public;
- (b) Requirements and practices that Borrower or the Designated Owner must adhere to in order to carry out the County's affirmative marketing procedures and requirements;
- (c) Procedures used by the Borrower or the Designated Owner to inform and solicit applications from persons in the housing market area who are not likely to apply without special outreach;
- (d) Records that will be kept describing actions taken by the Borrower or the Designated Owner to affirmatively market units, and records to assess the results of these actions; and
- (e) A description of how the Borrower or the Designated Owner will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

4. Environmental Review. The County has completed an assessment of activities to be undertaken with HOME funds in accordance with the requirements of CFR part 58. However, the Borrower and the Designated Owner must also comply with requirements outlined in Section 210 of this Agreement.

5. Displacement and Relocation. Requirements described in Section 301 of this Agreement as well as those listed at 92.353 of HOME regulations shall be met where applicable. NOTE: No Relocation is proposed for this project since the land is not occupied at the execution of this Agreement.

6. Labor. HOME funds will assist the construction of less than twelve (12) affordable housing units in this project. Therefore, HOME Labor Requirements described at 92.354 paragraph (a) do not apply to this project.

7. Conflict of Interest. The Borrower and the Designated Owner will comply with all requirements set forth herein regarding conflicts of interest.

8. Debarment and Suspension. As required in Section 92.357 of the HOME Regulations, the Borrower and the Designated Owner will comply with all debarment and suspension certifications.

**308. Right of the County to Cure Mortgage or Deed of Trust Default.** In the event of a mortgage or Deed of Trust default or breach by the Designated Owner, the Borrower and the Designated Owner shall immediately deliver to County a copy of any mortgage holder's notice of default. If the holder of any mortgage or Deed of Trust has not exercised its option to foreclose, the County shall have the right but no obligation to cure the default. In such event, the County shall be

entitled to reimbursement from the Borrower and/or the Designated Owner of all proper costs and expenses incurred by the County in curing such default. The County shall also be entitled to a lien upon the Property for any said costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or Deeds of Trust.

#### **400. USES OF THE PROPERTY**

The Borrower and the Designated Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that upon the development/construction and thereafter, the Borrower and the Designated Owner, its successors and assignees, shall use, maintain, and operate the Property as specified in this Agreement throughout the Term. All uses conducted on the Property including, without limitation, all activities undertaken by the Borrower pursuant to this Agreement shall conform to all applicable provisions of appropriate Codes.

None of the dwelling units on the Property shall at any time be utilized on a transient basis nor shall the Property or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium or rest home. The Designated Owner shall not convert the Property to condominium ownership during the Term without the prior written approval of the County, which approval the County may grant, withhold or deny in its sole and absolute discretion.

All Eleven (11) HOME units are designated as floating units. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

#### **401. Occupancy Restriction.**

Throughout the Term, the Borrower and the Designated Owner covenants and agrees to make available, restrict occupancy to, and rent Eleven (11) of the dwelling units on the Property as Affordable Units to Very-Low Income households at an Affordable Rent pursuant to the terms set forth in this Agreement. Prior to leasing an Affordable Unit, the Borrower and/or the Designated Owner shall verify the income eligibility of the tenant applicant in order to assure compliance with the rent and occupancy restrictions and monitoring requirements of this Agreement. The Borrower and/or the Designated Owner shall complete a SCHEDULE OF RENTS (Exhibit C) which will list the initial rents for each unit receiving HOME assistance. The Borrower and/or the Designated Owner shall upon request by the County complete such income verification on forms provided by the County.

#### **402. Rent Restrictions.**

##### **1. Affordable Rents shall not be greater than the lessor of:**

(a) The fair market rent for existing housing for comparable units in the area as established by the United States Department of HUD under 24 CFR 888.111. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the Borrower or

the Designated Owner must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant and for any tenant supplied range or refrigerator; or

(b) A low HOME program rent that does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits, which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a). In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the Borrower or the Designated Owner must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant and for any tenant supplied range or refrigerator. A copy of the current HOME Program Rents are attached as Exhibit F.

2. If the unit receives federal or state project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.

3. Rent Schedule and Utility Allowance. The County will approve the Affordable Rents proposed by the Borrower or the Designated Owner together with the monthly allowances for utilities and services to be paid by the tenant. The Borrower or the Designated Owner must re-examine the income of each tenant household living in the Affordable Units annually. The maximum monthly rent must be recalculated by the Borrower or the Designated Owner and reviewed and approved by the County annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for the Affordable Units is subject to the provisions of outstanding leases. The Borrower or the Designated Owner must provide written notice to tenants and to the County of those units not less than thirty (30) days before implementing any increase in rents.

4. Determining Tenant Income. Tenant income must be determined in accordance with 92.203 of HOME Regulations using the income option selected by the County.

5. Increases in Tenant Income. The Affordable Units shall qualify as Affordable Housing despite a temporary noncompliance if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as very low-income families must pay as rent the lesser of the amount payable by the tenant under state or local law or thirty percent of the family's adjusted monthly income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42. In addition, in projects in which the HOME units are designated as floating (as in this Agreement), tenants who no longer qualify as very-low income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood, as re-certified annually.

**403. Operation and Maintenance.** The Borrower and the Designated Owner shall manage, operate and maintain the Property in accordance with this Agreement and shall maintain or cause to be maintained the interiors and exteriors of the Affordable Units in a decent, safe and sanitary manner, and in accordance with the HUD Housing Quality Standards and the maintenance standards required by Section 92.251 of the HOME Regulations.

**404. Non-Discrimination Covenants.** The Borrower and the Designated Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Borrower or the Designated Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

The Borrower and the Designated Owner shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, marital status, familial status, disability, national origin or ancestry of any person.

**405. Tenant Protections.**

1. Lease. The Borrower or the Designated Owner, shall execute or cause to be executed a written lease in a form approved by the County with each tenant household identifying by name all permitted occupants, both adults and minors, occupying each Affordable Unit. The lease between tenants occupying the Affordable Units and the Designated Owner must be for not less than one (1) year unless otherwise agreed by the tenant and the Designated Owner.

2. Prohibited Lease Terms. The lease may not contain any of the following provisions:

(a) Agreement to be Sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Borrower or the Designated Owner in a lawsuit brought in connection with the lease;

(b) Treatment of Property. Agreement by tenant that the Borrower or the Designated Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. The Borrower or the Designated Owner may dispose of this personal property in accordance with state law;

(c) Excusing the Borrower or the Designated Owner from Responsibility. Agreement by the tenant not to hold the Borrower or the Borrower's agents, or the Designated Owner

or the Designated Owner' agent legally responsible for any action or failure to act, whether intentional or negligent;

(d) Waiver of Notice. The Borrower or the Designated Owner may institute a lawsuit without notice to the tenant;

(e) Waiver of Legal Proceedings. Agreement by the tenant that the Borrower or the Designated Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(f) Waiver of a Jury Trial. Agreement by the tenant to waive any right to a trial by jury;

(g) Waiver of Right to Appeal Court Decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(h) Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

3. Termination of Tenancy. The Borrower or the Designated Owner may not terminate the tenancy or refuse to renew the lease of a tenant of the Project except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by the Borrower's or the Designated Owner's service upon the tenant of a written notice specifying the grounds for the action.

4. Tenant Selection. The Borrower or the Designated Owner shall not refuse to rent a unit in the Project to a holder of a Rental Voucher or a Rental Certificate or comparable document evidencing participation in the Section 8 Program or a HOME Tenant-Based Assistance program. The Borrower or the Designated Owner must adopt written tenant selection policies and criteria approved by the County that:

(a) Are consistent with the purpose of providing housing for qualified Lower Income Households;

(b) Are reasonably related to HOME Program eligibility and the applicants' ability to perform the obligations of the lease;

(c) Give reasonable consideration to the housing needs of families that would have a Federal preference under Section 960.211 of Title II of the Cranston-Gonzalez National Affordable Housing Act of 1992; and

(d) Provide for:

(1) The selection of tenants from a written waiting list in the chronological order of their application insofar as is practicable; and

(2) The prompt written notification to any rejected applicant of the grounds for any rejection.

**406. Subordination.** This Agreement shall be recorded incorporating the restrictions on use of HOME Program funds contained herein and stating that this Agreement shall run with the land and shall be senior to all liens and encumbrances except the Primary Loans and those exceptions to title as are approved by County in writing.

**407. Monitoring.** Throughout the Term, the Borrower and the Designated Owner shall comply with all applicable record keeping and monitoring requirements set forth in Section 92.508 of the HOME Regulations and shall annually complete and submit to County a Certification of Continuing Program Compliance in the form attached hereto as Exhibit E, CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE and incorporated herein.

Representatives of the County shall be entitled to enter the Property upon at least twenty-four (24) hours notice to monitor compliance with this Agreement, to inspect the records of the Project with respect to the Affordable Units, and to conduct an independent audit of such records. The Borrower and the Designated Owner agree to cooperate with the County in making the Property available for such inspection. If for any reason the County is unable to obtain the Borrower's or the Designated Owner consent to such an inspection, the Borrower and the Designated Owner understand and agree that the County may obtain, at the Borrower's and/or the Designated Owner expense, an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. The Borrower and the Designated Owner agree to maintain records in a business like manner and to make such records available to the County upon twenty-four (24) hours notice. Unless the County otherwise approves, such records shall be maintained for the term of this Agreement.

## **500. DEFAULT AND REMEDIES**

**501. Events of Default.** Subject to the extensions of time set forth in Section 503, failure or delay by any party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement or of the Loan Documents constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an Event of Default (as such term is hereinafter

defined) has occurred. For purposes of this Agreement, an Event of Default for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall be defined as a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms, covenants or representations contained in this Agreement or any of the County Loan Documents, and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) days after notice thereof in writing is mailed by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement or of the County Loan Documents, the specific provision shall control.

In furtherance of the foregoing and by way of specific example, each of the following shall constitute an "Event of Default" by the Borrower and/or the Designated Owner under this Agreement.

1. Failure to Satisfy Conditions Precedent. Failure of the Borrower or the Designated Owner to satisfy the conditions precedent to the disbursement of County Loan proceeds as set forth in Section 211 within the time specified therefor in the SCHEDULE OF PERFORMANCE (Exhibit B).

2. Material Misstatement or Omissions. If any omission, representation or warranty contained in this Agreement or in any application, evidence of financing or financial statement, certificate or report submitted to the County in connection with the County Loan proves to have been incorrect in any material respect when made, or becomes incorrect, and the Borrower or the Designated Owner fails to immediately notify the County in writing as required by this Agreement.

3. Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Borrower or the Designated Owner to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of the Borrower or the Designated Owner or seeking any arrangement for the Borrower or the Designated Owner under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Borrower or the Designated Owner in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Borrower or the Designated Owner if any such decree or order described in clauses (i) to (iv) inclusive shall have continued unstayed or undischarged for a period of forty-five (45) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under subsection 501(6) as well; or the Borrower or the Designated Owner shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv) inclusive. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

4. Assignment: Attachment. The Borrower or the Designated Owner shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within forty-five (45) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which



event such lesser time period shall apply under this subsection 501(5) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note representing the County Loan contemplated hereunder.

5. Suspension: Termination. The Borrower or the Designated Owner shall have voluntarily suspended its business or, if the Borrower or the Designated Owner is a partnership, the partnership shall have been dissolved or terminated.

6. Liens on Development and Land. A lien (other than liens approved in writing by the County) shall have been recorded against the Property or any part thereof, or any interest or right appurtenant thereto, or the service of any notice to withhold proceeds of the County Loan and the continued maintenance of said claim of lien or notices to withhold for a period of thirty (30) days without discharge or satisfaction thereof or provision therefor satisfactory to the County.

7. Defaults Under Other County Loans. Any default declared by any lender under any loan document related to any loans, secured by a Deed of Trust on the Property shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

8. Prohibited Transfer. There is a sale or other transfer in violation of Section 103 above.

**502. Remedies and Acceleration of Note.** The occurrence of any Event of Default will either at the option of the County, or automatically where so specified, relieve the County of any obligation to perform hereunder including, without limitation, to make or continue the County Loan, and shall give the County the right to proceed with any and all remedies set forth in this Agreement and/or the County Loan Documents including, but not limited to, the following:

1. Acceleration of Note. The County shall have the right to cause all indebtedness of the Borrower or the Designated Owner to the County under this Agreement and the Note to become immediately due and payable pursuant to the terms stated in section 501. The Borrower and the Designated Owner waive all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code and including foreclosure under the Deed of Trust. The Borrower and the Designated Owner shall be liable to pay the County on demand all expenses, costs and fees (including without limitation attorneys' fees, costs and related expenses) paid or incurred by the County in connection with the collection of the County Loan, the default hereunder, and the preservation, maintenance, protection, sale, or other disposition of the security given for the County Loan.

2. Specific Performance. The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Borrower or the Designated Owner to

perform its obligations and covenants under the County Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the County Loan Documents.

3. Right to Cure at the Borrower's or the Designated Owner's Expense. The County shall have the right to cure any monetary default by the Borrower or the Designated Owner under a loan other than the County Loan; provided, however, that if the Borrower or the Designated Owner is in good faith contesting a claim of default under a loan and the County's interest under the County Loan Documents are not imminently threatened by such default, the County shall not have the right to cure such default. The Borrower and the Designated Owner agree to reimburse the County for any funds advanced by the County to cure a monetary default by the Borrower or the Designated Owner upon demand therefore, together with interest thereon at the rate of ~~ten~~ percent (10%) per annum from the date of expenditure until the date of reimbursement.

4. Termination. The County shall have the right to terminate this Agreement and, at its sole option to seek any remedies at law or equity available hereunder, and thereafter neither party shall have any further rights against the other under this Agreement.

**503. Force Majeure.** Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the County's acts or failure to act shall not excuse performance of the County hereunder), or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

**504. Right of Contest.** The Borrower and the Designated Owner shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

**505. Remedies Cumulative.** No right, power, or remedy given to the County by the terms of this Agreement or the County Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against the Borrower or the Designated Owner and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

**506. Waiver of Terms and Conditions.** The County may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement without the Borrower and Designated Owner completing an amendment to this Agreement. No waiver of any default or breach by the Borrower or the Designated Owner hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by the Borrower or Designated Owner requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the County Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the County Loan Documents unless in the exercise of any right, power, or remedy all obligations of the Borrower or Designated Owner to County are paid and discharged in full.

**507. Non-Liability of County Officials and Employees.** No member, official or employee of the County shall be personally liable to the Borrower or Designated Owner, or any successor in interest, in the event of any default or breach by the County or for any amount which may become due to the Borrower or Designated Owner or its successors, or on any obligations under the terms of this Agreement.

## **600. GENERAL PROVISIONS**

**601. Time.** Time is of the essence in this Agreement.

**602. Notices.** Any notice requirement set forth herein shall be deemed to be satisfied Eleven (11) days after mailing of the notice first-class United States Certified Mail, postage prepaid, addressed to the appropriate party as follows:

**Borrower:** Southern California Housing Development Corporation of Riverside, Managing  
General Partner for Malvern Housing Partners L.P., A California Limited  
Partnership  
8265 Aspen Street, Suite 100  
Rancho Cucamonga, CA 91730  
Attn: Executive Director

**Designated Owner:** Malvern Housing Partners L.P., a California Limited Partnership  
C/O Southern California Housing Development Corporation of Riverside  
8265 Aspen Street, Suite 100  
Rancho Cucamonga, CA 91730

**County:** Thomas R. Laurin, Director

County of San Bernardino  
Department of Economic & Community Development  
290 North "D" Street, Sixth Floor  
San Bernardino, CA 92415-0040

Such addresses may be changed by notice to the other party given in the same manner as provided above.

**603. Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the County Loan Documents, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees.

**604. No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of the County, its successors and assigns, and the Borrower and Designated Owner and each of its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

**605. County to File Notices.** The Borrower and Designated Owner irrevocably appoint, designate, and authorize the County as its agent (said agency being coupled with an interest) to file for record any notices that the County deems necessary or desirable to protect its interest hereunder and under the County Loan Documents.

**606. Actions.** The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the disbursement of any proceeds of the County Loan.

**607. Successors and Assigns.** The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of the Borrower and/or Designated Owner's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of the County as specified in Section 103 above, and that any such assignment without said consent shall be void.

**608. Use of Words.** Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

**609. Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

**610. Governing Law.** This Agreement and the County Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California.

**611. Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by the parties to this Agreement.

**612. Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the County, such approval may be given on behalf of the County by the Chief elected official or his or her designee, who may, in his or her sole discretion, submit such approval or consent for consideration by County Counsel.

**613. Captions and Headings.** Captions and headings in this Agreement are for convenience of reference only, and are not to be considered in construing the Agreement.

**614. Former County Officials.** Borrower and Designated Owner agrees to provide or have already provided information on former County of San Bernardino Administrative Officials (as defined below) who are employed by or represent Borrower or Designated Owner. The information provided includes a list of former County Administrative Officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Borrower or Designated Owner. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such Officer's staff, County Administrative Officer or member of such Officer's staff, County Department or Group Head, Assistant Department or Group Head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**615. Contract Compliance.** The Borrower and Designated Owner will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and Labor Surplus Area firms (a firm located in an area of high unemployment) are used when possible in compliance with provisions of Title 24 Code of Federal Regulations Part 85.36 (e).

1. The Borrower and Designated Owner agrees to comply with the provisions of the Contract Compliance Program of San Bernardino County and the rules and regulations adopted pursuant thereto. Borrower and Designated Owner shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act, and San Bernardino County Policy No. 15-01, as revised, and other applicable federal, state, and county laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

The Borrower and Designated Owner shall make every effort to ensure that all projects founded wholly or in part by HOME Program funds shall provide equal employment and career advancement opportunities for minorities and women. In addition, the Borrower and Designated

Owner shall make every effort to employ residents of the area and shall keep a record of the Borrower and Designated Owner staff positions that have funded directly by or as a result of this Program.

**616. Effective Date.** This Agreement shall be effective upon execution by County.

**617. Entire Agreement.** This Agreement shall be executed in five (5) duplicate originals, each of which is deemed to be an original.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Property.

(Continued on next page)

This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed below.

**COUNTY OF SAN BERNARDINO**

**BORROWER:**

Southern California Housing Development Corporation of Riverside, Managing General Partner for Malvern Housing Partners L.P., A California Limited Partnership, Borrower, a Community Housing Development Organization (CHDO)

By: \_\_\_\_\_  
FRED AGUIAR, Chairman, Board of Supervisors

By: \_\_\_\_\_  
Richard J. Whittingham, CPA  
Chief Financial Officer

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

**DESIGNATED OWNER:**

Malvern Housing Partners, L.P., A California Limited Partnership

By: California Housing Development Corporation of Riverside, A California Nonprofit Public Benefit Corporation  
Its: General Partner

J. RENEE' BASTIAN  
Clerk of the Board of Supervisors  
of the COUNTY of San Bernardino  
BY: \_\_\_\_\_

Richard J. Whittingham, CPA  
Chief Financial Officer

By: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

ALAN K. MARKS  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

Heritage Pointe Senior Apartments  
8590 Malvern  
Rancho Cucamonga, CA

APN 0209-041-54

See following pages.



## **EXHIBIT B**

### **SCHEDULE OF PERFORMANCE**

Heritage Pointe Senior Apartments  
8590 Malvern  
Rancho Cucamonga, CA

*HOME Loan Approval	October 29, 2002
*HOME Funds Disbursement	November, 2002
*Substantial Completion of Construction	December, 2002
*Full Occupancy	March, 2003

\*All dates are estimated. Any changes to these dates will not require amendment to this Agreement.

## **EXHIBIT C**

### **SCHEDULE OF RENTS**

Heritage Pointe Senior Apartments  
8590 Malvern  
Rancho Cucamonga, CA

### **HOME ASSISTED UNITS**

<b>UNITS/OR NUMBER</b>	<b>NUMBER OF BEDROOMS</b>	<b>INITIAL HOME RENT INCLUDING UTILITIES</b>
11	1	\$471
0	2	\$566
0	3	\$653

Note: All HOME units to be Floating Units.

## EXHIBIT D

### PROMISSORY NOTE

Straight Note Interest Bearing  
(This note contains an acceleration clause)

FOR VALUE RECEIVED, the undersigned Borrower promises to pay to the order of the County of San Bernardino, Department of Economic and Community Development (Lender) located at 290 N. "D" Street, 6th Floor, San Bernardino, California or other location designated by Lender, the principal sum of Four Hundred Thousand Dollars (\$400,000), with interest, and in accordance with the terms herein and under the County of San Bernardino HOME Investment Partnerships Program Agreement (Property Loan Agreement) dated October 29, 2002, for the purpose of developing a new affordable housing project to be named "Heritage Pointe Senior Apartments" (the "Property") located at 8590 Malvern Avenue in the City of Rancho Cucamonga.

The Loan and this Note are secured by a Deed of Trust of even date herewith executed by Southern California Housing Development Corporation of Riverside, (Borrower). This Deed of Trust is executed in favor of Lender and is to be repaid in accordance and subject to all of the terms and conditions of this Promissory Note and Property Loan Agreement including the following:

1. The term of this Note is 20 years commencing on the date of recordation of the Trust Deed. The Affordability Period is 55 years from the date the Notice of Completion is recorded for the HOME-assisted units as outlined in the Property Loan Agreement.
2. In installments and at the times hereinafter stated, for value received, Borrower(s) promise(s) to pay to Lender on order the principal sum of Four Hundred Thousand Dollars (\$400,000) with interest from November 1, 2002, on the amounts of principal remaining from time to time unpaid, until said principal sum is paid, at the interest rate of three percent, (3%) per annum. Principal and interest due in monthly installments of \$2,218.39 or more on the 1st day of November, 2002, and continuing through October 31, 2007. (Payments amortized over twenty years).
3. As long as Borrower is in compliance with all terms and conditions of the Note and the Property Loan Agreement, repayment of this Note shall be deferred for a period of up to 5 years, commencing November 1, 2002, and continuing through October 31, 2007. At the end of the five-year period or **any year prior to the end of the five-year** period where the net profit, (Residual Receipts as defined in the Property Loan Agreement) exceeds 15%, the County may require the appropriate repayment to begin.
4. The County may extend the repayment deferral period for additional five (5) year periods, or portions thereof, if all terms and conditions set forth in this Agreement are continuing to be met. The entire loan may be forgiven if all terms and conditions set forth in said Agreement are met for the entire 20-year loan period.
5. In the Event of Default in any of the terms and conditions of the Note or the Property Loan Agreement, interest shall accrue on the unpaid principal balance of the Note at the rate of twelve

percent (12%) per annum compounded annually from the date of default as determined by Lender until the Note is paid in full; provided, however, that if such rate of interest may not be collected under applicable law, interest shall accrue on the unpaid principal balance of the Note the highest rate permitted under the laws of the State of California.

6. Borrower agrees to be responsible for any increased costs not included in the amount of this loan and understand that any additional monies necessary to complete the acquisition of the property must be furnished by the Borrower and are not a part of this Note.
7. Borrower will promptly pay all taxes, levies, and assessments on the Property for the term of this Promissory Note and Affordability Period.
8. If Lender has not received the full monthly payment required herein, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of four percent (4%) of the overdue amount of each payment.
9. Borrower agrees that the Property shall be kept insured against loss by fire and/or other hazards in a sum not less than the amount of all indebtedness on the Property including, but not limited to, the original balance of said Home Program loan. The Lender shall be named in the loss payable clause of the policy and shall be provided with a current copy of the policy during the term of this loan.
10. Borrower or his/her representatives must notify Lender in writing prior to the sale, conveyance, or transfer of the property.
11. Should Borrower agree to or actually sell, convey, transfer, or dispose of the real property described in the Deed of Trust securing this note, or any part of it, or any interest in it or should a transfer of the Property occur by operation of law, (except as provided for in the Property Loan Agreement) the entire remaining principal balance may become immediately due and payable as determined in writing by the County.
12. Borrower agrees to comply with all laws, regulations, covenants, conditions, and restrictions affecting the Property.
13. Borrower agrees that Lender is not to be held liable for any deficiency in the workmanship or materials supplied by any contractor(s) performing any work on the Property at any time. Lender DISCLAIMS ALL WARRANTY LIABILITY THAT ANY WORK UNDERTAKEN BY ANY CONTRACTOR(S) AT ANY TIME WILL PROPERLY CORRECT HOUSING CODE VIOLATIONS OR MINIMUM STANDARDS OF FITNESS OR MERCHANTABILITY, expressed or implied.
14. Borrower shall indemnify, defend and hold harmless Lender, its officers, agents, employees and volunteers from any and all claims, losses or legal actions arising from any and all of the actions of Borrower, its employees, agents, contractors, subcontractors, tenants, and volunteers arising out of this Promissory Note.
15. If any provision of this Note is found to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue with full force and effect without being impaired or invalidated in any way.

16. No waiver by either party of any of the herein terms and conditions shall constitute a continuing waiver of such terms or conditions.
17. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter hereof, and no other agreement, statement, or promise relating the subject matter of this Agreement which is not contained herein or in the Deed of Trust executed herewith, shall be valid or binding on either of the parties.
18. Borrower agrees to comply with the terms of this Promissory Note, the related Deed of Trust and the Property Loan Agreement. Should Borrower fail to comply with the terms of this Promissory Note, Property Loan Agreement or of the accompanying Deed of Trust, Borrower will be in default and the entire Loan shall immediately become due and payable, subject to the conditions outlined above.
19. Borrower agrees that the improved property shall not be converted to for-sale condominium units during the term of the Note and/or Property Loan Agreement.
20. Borrower agrees not to discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any Federal, State or local housing assistance program or, except for a housing project for elderly person, on the basis that the tenants have a minor child or children who will be residing with them, for at least 20 years beginning on the date of the Notice of Completion is recorded.
21. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.
22. Borrower acknowledges that Lender has furnished Borrower with a true copy of this document.

Malvern Housing Partners, L.P.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Richard J. Whittingham, CPA  
Chief Financial Officer

Southern California Housing Development Corporation of Riverside

By: \_\_\_\_\_

Date: \_\_\_\_\_

Richard J. Whittingham, CPA  
Chief Financial Officer

**EXHIBIT E**

**CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE**

Heritage Pointe Senior Apartments  
8590 Malvern  
Rancho Cucamonga, CA

Southern California Housing Development Corporation of Riverside and Malvern Housing Partners L.P., A California Limited Partnership, hereby certifies that it is complying with all applicable, ongoing HOME program requirements for the Property's period of affordability which has been determined to be fifty-five (55) years from initial date of occupancy, as follows:

Eleven (11) units are being made available to households earning fifty percent (50%) or less than the Area Median Income.

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Borrower and Designated Owner are maintaining the following records and reports in order to assist the County in meeting its record keeping and reporting requirements:

1. Files on the annual review and certification of tenant income;
2. All information on the qualification of affordable rents;
3. Terms and conditions of all signed leasehold agreements between tenants and Borrower;
4. All legal reports and records required by County.

By: \_\_\_\_\_

Southern California Housing Development Corporation of Riverside

Date: \_\_\_\_\_

By: \_\_\_\_\_

Malvern Housing Partners L.P., A California Limited Partnership

Date: \_\_\_\_\_

## EXHIBIT F

Heritage Pointe Senior Apartments  
8590 Malvern  
Rancho Cucamonga, CA

**U.S. DEPARTMENT OF HUD**                      **STATE : CALIFORNIA**

### **FISCAL YEAR 2002   H O M E   P R O G R A M   R E N T S**

**PMSA:   RIVERSIDE-SAN BERNARDINO, CA**

	Efficiency	1-BR	2-BR	3-BR	4-BR
LOW HOME RENT LIMIT	\$440	\$471	\$566	\$653	\$728
<b><i>FOR INFORMATION ONLY:</i></b>					
FAIR MARKET RENT	\$482	\$537	\$656	\$910	\$1,076
50% RENT LIMIT	\$440	\$471	\$566	\$653	\$728
65% RENT LIMIT	\$552	\$593	\$713	\$816	\$891

\*Note:            Figures above are maximum rents that may be charged for HOME Units when all utilities (excluding telephone) stove and refrigerator are included in the rent.

## EXHIBIT G

### PROJECT BUDGET

Heritage Pointe Senior Apartments  
8590 Malvern  
Rancho Cucamonga, CA

<u>SOURCE</u>	<u>AMOUNT</u>	<u>USE</u>	<u>AMOUNT</u>
<b>CONSTRUCTION FINANCING:</b>			
Construction Loan	\$ 850,000	Acquisition Costs/Closing	\$ 232,500
LIHTC Equity – 4%	\$ 649,350	Architecture/Fees & Permits	\$ 906,000
MHRB/Agency Loan	\$3,920,000	Indirect Construction/Legal	\$ 160,469
San Bernardino County HOME Funds	<u>\$ 400,000</u>	Construction Cost	\$3,967,263
		Developer's Fee	\$ 200,000
		Rent-Up Costs/Reserves	\$ 142,000
		Financing Costs	<u>\$ 211,118</u>
<b><u>TOTAL COST</u></b>	<b><u>\$5,819,350</u></b>		<b><u>\$5,819,350</u></b>
<b>PERMANENT FINANCING:</b>			
Permanent Loan	\$ 350,000	Acquisition Costs/Closing	\$ 232,500
LIHTC Equity – 4%	\$1,443,000	Architecture/Fees & Permits	\$ 906,000
MHRB/Agency Loan	\$3,920,000	Indirect Construction/Legal	\$ 177,500
San Bernardino County Home Funds	<u>\$ 400,000</u>	Construction Cost	\$3,967,263
		Developer's Fee	\$ 400,000
		Rent-Up Costs/Reserves	\$ 177,525
		Financing Costs	<u>\$ 252,212</u>
<b><u>PROJECT TOTAL COST</u></b>	<b><u>\$6,113,000</u></b>		<b><u>\$6,113,000</u></b>





## **EXHIBIT H**

### **SPECIAL TERMS AND CONDITIONS**

Heritage Pointe Senior Apartments  
8590 Malvern  
Rancho Cucamonga, CA

**THE FOLLOWING ARE THE SPECIAL TERMS AND CONDITIONS ASSOCIATED WITH THIS PROJECT:**

None